UNITED
NATIONS

CERD

International Convention on
the Elimination
of All Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/398/Add.1
28 September 2001

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Fifteenth periodic reports of States parties due in 2000

Addendum

SLOVENIA*

[13 August 2001]

* This document contains the fifth periodic report of Slovenia due on 6 July 2001. For the initial to fourth periodic reports of Slovenia, submitted in one document, and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/352/Add.1 and CERD/C/SR.1405-1406 and 1416.

The information submitted by Slovenia in accordance with the guidelines for the initial part of the reports of States parties is contained in document HRI/CORE/1/Add.35.

GE.01-44935 (E) 101201

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION: PREPARATION OF THE FIFTH PERIODIC REPORT	1 - 8	4
	A. General explanation	1 - 3	4
	B. Structure of the periodic report	4 - 8	4
II.	GENERAL QUESTIONS AND EXPLANATIONS	9 - 28	6
	A. Status of the International Convention on the Elimination of All Forms of Racial Discrimination in the national law of the Republic of Slovenia	9 - 14	6
	B. General information on the protection of human rights in Slovenia	15 - 19	7
	C. Protection and rights of the members of national, ethnic, religious and linguistic groups	20 - 28	8
III.	GENERAL INFORMATION ON THE LATEST ACTIVITIES AT THE LEVEL OF THE GOVERNMENT AND THE STATE	29 - 46	10
	A. Measures adopted after the presentation of the initial report	29 - 30	10
	B. Education and training of State administration officials with particular attention to tasks involving the lawful use of force	31 - 38	11
	1. Ministry of the Interior	31 - 33	11
	2. Ministry of Defence	34 - 35	12
	3. Ministry of Justice	36 - 38	12
	C. Access to information on the possibility of protection in cases of the violation of human rights	39 - 42	12
	D. Temporary refugees	43 - 46	13

CONTENTS (continued)

		Paragraphs	Page
IV.	PRACTICAL IMPLEMENTATION OF THE PRINCIPLES AND OBJECTIVES OF THE CONVENTION	47 - 51	14
	Appendix: Selected cases		
	A. References to the International Convention on the Elimination of All Forms of Racial Discrimination		20
	B. Legal remedies/possibility of reimbursement of non-material damage caused by violation of human rights on the basis of national or ethnic background		20
	C. Non-discriminatory treatment of the members of different national and ethnic communities		21
	D. Punishment and prosecution of racial violence offences		25
	E. Status and rights of temporary refugees in the Republic of Slovenia		26
Sources			28

I. INTRODUCTION: PREPARATION OF THE FIFTH PERIODIC REPORT

A. General explanation

1. The periodic report of the Republic of Slovenia has been prepared in accordance with the questions and proposals presented in the concluding observations and recommendations of the Committee on the Elimination of Racial Discrimination (CERD) in August 2000, which the Committee adopted after the presentation of the initial report of the Republic of Slovenia on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.[1] The answers to the questions explain in greater detail individual areas already discussed in the initial report of the Republic of Slovenia. For greater clarity, the general part of the periodic report repeats individual points from the initial report. These are then expanded with additional information in the second and third parts of the periodic report, which focus on the latest positive changes and concrete forms of implementation.

2. Concerning the envisaged content of requested answers, information on individual points has been provided by the competent ministries and offices, the National Assembly, the inspection services, the Office of the Human Rights Ombudsman, the Constitutional and Supreme Courts and the Public Prosecutor's Office. Written information has been given additional oral explanation at two joint preparatory meetings of the representatives of the ministries and offices.

3. The material is based on information obtained from the Decree of the Government of the Republic of Slovenia, adopted on 29 March 2001, and written material from the Ministry of Justice of 13 March 2001 and 5 March 2001, the Office for Nationalities of 12 March 2001, the Ministry of the Interior of 13 March 2001, the Government Office for Immigration and Refugees of the Republic of Slovenia of 9 March 2001, 24 April 2001 and 16 May 2001, the Public Relations and Media Office of 20 March 2001, the Ministry of Defence (General Staff of the Slovenian Army) of 26 March 2001, the Ministry of Culture of 17 April 2001, the Public Prosecutor's Office of the Republic of Slovenia of 30 May 2001 and the National Assembly of 17 May 2001. Additional information has been acquired from published professional literature, reports of the Republic of Slovenia to other international institutions and published results of relevant research already conducted.

B. Structure of the periodic report

4. During the preparation of the report, the structure of answers on individual points explicitly mentioned in the concluding observations was followed as closely as possible. For consistency, the text was divided into three thematic sets:

(a) General questions and explanations;

(b) General information on the latest activities at the level of the Government and the State after the adoption of the concluding observations;

(c) Practical implementation of principles and objectives of the International Convention on the Elimination of All Forms of Racial Discrimination.

5. The periodic report of the Republic of Slovenia provides answers to questions and suggestions in the concluding observations of CERD which are connected with:

(a) The status of the International Convention on the Elimination of All Forms of Racial Discrimination in the national law of the Republic of Slovenia, particularly in cases of non-conformity with national legislation;

(b) Judicial practice, and particularly cases of direct reference to the International Convention on the Elimination of All Forms of Racial Discrimination;

(c) The guaranteed level of protection of individual ethnic groups and non-discrimination against members of different ethnic communities in the areas of political participation, media access, education and culture;

(d) The legal framework of national legislation and data on the prosecution of individuals or organizations that spread ideas of racial supremacy or perpetrate racial violence;

(e) The issue of whether the general public in the Republic of Slovenia is sufficiently informed of the possibilities of legal protection for the victims of racism and xenophobia;

(f) Education within the framework of the State administration and individual ministries and spreading of information about the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and other documents on the protection of human rights, particularly for officials of the State administration performing tasks which involve the lawful use of force;

(g) Assigning status to temporary refugees in the Republic of Slovenia, thereby providing them with rights, particularly those guaranteed by the International Convention on the Elimination of All Forms of Racial Discrimination, and facilitating their integration into Slovenian society;

(h) The explanation of the possibility for the Republic of Slovenia to make a declaration to CERD in accordance with article 14 of the Convention and ratification of amendments to article 8, paragraph 6.

6. Answers on individual points differ in length since only some ministries and offices provided concrete and clear answers, thereby making it possible to answer the questions and suggestions in only a few sentences.

7. Most of the questions raised in the concluding observations are connected with the position of the Convention and general anti-discrimination provisions in the national legislation of the Republic of Slovenia. Consequently, these questions form the special focus of the

periodic report. By presenting the investigation of individual cases and practical implementation, the report also gives a partial answer to the general questions of the concluding observations, since cases from judicial practice are listed as an explanation and illustration of individual statements in the text.

8. The description of practical implementation is expanded with data from structured discussions/interviews which followed a fixed structure and were held with the representatives of institutions which deal with the practical implementation of human rights (National Assembly, Office of the Human Rights Ombudsman, Constitutional Court, Supreme Court). This part contains cases which are connected with:

(a) General questions concerning the implementation of the Convention in Slovenia;

(b) The impact of decrees and initiatives of individual institutions for the purpose of the adoption of systemic solutions; and

(c) Specific cases connected with the implementation of the Convention.

II. GENERAL QUESTIONS AND EXPLANATIONS

A. Status of the International Convention on the Elimination of All Forms of Racial Discrimination in the national law of the Republic of Slovenia

9. In accordance with the provisions of the Constitution, ratified international documents are part of national law and are implemented directly. Laws and other regulations must be in conformity with the generally accepted principles of international law and international treaties which are legally binding for Slovenia (article 8 of the 1991 Constitution of the Republic of Slovenia). In view of this article, the generally valid principles of international law and treaties ratified by the Republic of Slovenia can be considered as part of national law.

10. Of particular importance for the legal status of ratified and published treaties and generally valid principles of international law are the provisions of the second paragraph of article 153 of the Constitution of the Republic of Slovenia, according to which laws must be in accordance with the generally valid principles of international law and international treaties ratified by the National Assembly of the Republic of Slovenia. According to article 106/1 of the Constitution of the Republic of Slovenia, it is within the power of the Constitutional Court to decide whether laws and other regulations conform to ratified international treaties and the general principles of international law.[2] In view of this, an international treaty ratified and published by the Republic of Slovenia is hierarchically higher than laws and is subject only to the Constitution as the supreme legal act. As a result, a law adopted at a later stage on the same topic as an international treaty does not amend or annul the treaty even if the law contradicts the treaty's provisions (the lex posterior derogat legi priori principle is not applicable).

11. The content of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination is also set out in the Constitution of the Republic of Slovenia

and individual laws adopted after 1999.[3] Violations are defined as criminal offences in the Criminal Code of the Republic of Slovenia, which, together with the Constitution, is recognized by the general public as the most important legal act in the country.

12. In the Slovenian legal system, the prohibition of discrimination is a constitutional category, for article 14 of the Constitution states that in Slovenia, all shall be guaranteed equal human rights and freedoms.[4] Any incitement to national, racial, religious or any other kind of discrimination and the inflaming of national, racial, religious or other hatred and intolerance are unconstitutional (article 63 of the Constitution of the Republic of Slovenia).

13. The legal system of the Republic of Slovenia envisages criminal punishment for the violation of equality, the promotion of intolerance and the spreading of ideas of racial supremacy. The violation of equality is defined as a criminal offence in article 141 of the Criminal Code of the Republic of Slovenia (the chapter: Criminal Offences Committed in Violation of Human Rights and Freedoms; the criminal offence: violation of equality). According to this article, anyone who by reason of difference in nationality, race, colour, religion, ethnic identity, sex, language, political or other beliefs, sexual orientation, economic status, family background, education, social status or any other reason denies somebody a human right or fundamental freedom acknowledged by the international community or defined by the Constitution or law, or if he/she limits any of these rights, or if he/she grants a special right or privilege to the other based on these differences, shall be punished with a fine or imprisonment of up to one year.

14. Inflaming of national, racial or religious hatred, discord or intolerance is defined as a criminal offence in article 300 of the chapter "Criminal Offences Against Public Order and Peace" of the Criminal Code of the Republic of Slovenia ("Incitement of national, racial or religious hatred, discord or intolerance").[5] According to this article, anybody inciting or encouraging national, racial or religious hatred, discord or intolerance or promoting ideas of racial supremacy shall be punished with imprisonment of up to two years.

B. General information on the protection of human rights in Slovenia

15. With the declaration of its independence, the Republic of Slovenia pledged to ensure the protection of human rights, without any discrimination, for all individuals in its territory in accordance with the Constitution and adopted international obligations.

16. The Constitutional Court of the Republic of Slovenia has stressed many times that the purpose of the Constitution is not a formal or theoretical acknowledgement of human rights; the Constitution demands that the possibility for their effective and actual implementation must be provided.[6]

17. Judicial protection of human rights and the right to redress for the violation of such rights (article 15 of the Constitution of the Republic of Slovenia) are guaranteed.[7] Everybody has the right to appeal or to any other legal remedy against the rulings of courts and other State

authorities, local community authorities and persons vested with public authority (article 25 of the Constitution of the Republic of Slovenia) and the possibility to lodge a complaint with the Human Rights Ombudsman and the various inspection services operating in the area of public services.

18. In the legal remedy system, appeal as a regular legal remedy has an important role. In cases of final rulings, all procedures envisage extraordinary legal remedies. In cases of the violation of human rights or fundamental freedoms, the possibility of an indemnity claim is also available.

19. In proceedings involving a constitutional complaint by an individual who has been refused asylum in the Republic of Slovenia, the Constitutional Court initiated a procedure for the review of the constitutionality of the second subparagraph of paragraph 2 of article 40 of the Asylum Act (Official Gazette of the Republic of Slovenia, No. 61/99) which, in contradiction of the right to legal remedy, excludes any possibility of appeal against the ruling of the first-instance court.[8] According to the regular constitutional judicial review, this right guarantees the principle of hierarchy in the rulings of courts and other authorities, that is the right to the judgement of all issues important for a decision connected with a right or obligation by a second-instance body of authority.[9]

C. Protection and rights of the members of national, ethnic, religious and linguistic groups

20. A particularly important right of the members of different national and ethnic communities is the right freely to express affiliation with their nation or national community, to nurture and give expression to their culture and to use their language and script (article 61 of the Constitution of the Republic of Slovenia). For the sake of the implementation of this right, the Republic of Slovenia has been supporting the activities of organizations and societies belonging to the members of nations and ethnic groups from the former common State. On the basis of regular public tenders for the allocation of funds to cultural activities, the Ministry of Culture has been allocating purpose-specific funds to these societies and organizations.[10]

21. Both as individuals and as citizens of the Republic of Slovenia, members of the indigenous Italian and Hungarian ethnic communities and the Romani community exercise their general human rights and individual rights connected with their nationality, such as the expression of national identity, preservation of language and culture (article 61 of the Constitution of the Republic of Slovenia), use of language and script (article 62 of the Constitution of the Republic of Slovenia).

22. As for all other citizens of the Republic of Slovenia, these rights are guaranteed to all members of different ethnic, linguistic and religious communities in Slovenia (Serbs, Croats, Bosnians and the Roma) and are observed in accordance with the principles of equality and non-discrimination. In practice, these rights are observed in the basic areas of everyday life (education and rights at work), for according to the data supplied by the competent inspection services, there have been no reports or complaints of the violation of the principle of equality or

discrimination on a racial or ethnic basis or incitement of national, religious or racial intolerance.[11] Moreover, on the basis of constitutional authorization, the legal system grants special rights to the Italian and Hungarian ethnic communities and the Romani community.

23. In the grounds for its ruling (B.-II, point 7),[12] the Constitutional Court of the Republic of Slovenia states that the constitutional provision in article 65 of the Constitution "empowers the legislator to grant special rights, apart from general rights held by everyone, to the Romani community as a special ethnic community. In granting special status and special rights to the Romani community, the legislator is not restricted by the principle of equality which in the granting of human rights and fundamental freedoms prohibits any kind of discrimination based on nationality, race or any other circumstance defined in the first paragraph of article 14 of the Constitution. The constitutional authorization from article 65 allows the legislator to grant special (additional) protection to the Romani community and its members, which in the theory of law is known as positive discrimination or positive protection".

24. Special rights are based on the level of historically acquired special rights which are granted on the basis of the indigenous origin of these communities in accordance with the territorial principle and regardless of the number of their members. These rights are exercised by the members of these communities individually or together with other members of the community.

25. When conditions across the entire territory of the States of the former Yugoslavia began to normalize, positive changes were also made in the establishing of bilateral relations between Slovenia and these countries, in the regulation of the legal status of those inhabitants of Slovenia who had originally come from these countries and in the strengthening of mutual trust. In March 2001, the Government of the Republic of Slovenia and the Federal Government of the Republic of Yugoslavia signed an agreement on exchange in culture and education, according to which the two countries agree to cooperate in culture, education and art and promote mutual education in the languages, literatures and civilization of the two countries. On the basis of international treaties and bilateral agreements, optional additional classes of their mother tongue and culture are organized for children of Croatian, Macedonian and Albanian nationality who attend Slovenian primary schools.

26. Because of the special situation of the Romani community, the same criteria of ethnic community protection used for the two indigenous ethnic communities do not apply. Instead, the method of gradual implementation must be employed. At the present moment, measures for the establishing of equality of the Romani community primarily encompass efforts for the integration of the Roma into society at large (housing, employment, education, social participation, preventive health protection) and for the development of culture, the media and preservation of the Romani identity and traditions.[13] The initial report of the Republic of Slovenia (see para. 72) sets out the most important measures concerning the care and education of Romani children,[14] cultural activities of the Roma, the development of media (Romani radio broadcasts, Romani newspapers) and the right to representation in bodies of local self-government in areas with an indigenous Romani population.[15] In reviewing the programme of assistance to the Roma, the Government of the Republic of Slovenia on 1 July 1999 established that the cooperation between the State bodies and municipalities has already yielded positive results. For this reason, it has ordered the ministries and government services which in

the course of their work deal with the problems of the Roma to pay special attention to these issues and incorporate them into national programmes prepared by them. It advised the ministries allocating budget funds for the promotion of the development of local communities to focus particularly on housing for the Roma and those individuals whose living conditions have deteriorated due to the low-standard Romani settlements. Government representatives in the administrative bodies of the Housing Fund of the Republic of Slovenia, the Ecological Development Fund of the Republic of Slovenia and the Fund for the Regional Development and Preservation of the Slovenian Countryside received instructions from the Government of the Republic of Slovenia to propose an appropriate line of action for the management of these funds.

27. In practice, new possibilities for the gradual improvement of the Romani situation in Slovenia have emerged. Media reports on the Roma are definitely much more positive in terms of the understanding of specific cultural characteristics than they used to be several years ago.

28. In May 2000, the "Equal Opportunity" programme for the employment of the Roma was adopted by the Slovenian Government. The central aim of the programme is the training of the Roma for employment, thereby increasing the number of regularly employed Romani individuals. Opportunities lie either in the public works programme or in the founding of special companies and cooperatives. Slovenia is also involved in the establishing of the Central European Romani employment information system, "Roma Net".

III. GENERAL INFORMATION ON THE LATEST ACTIVITIES AT THE LEVEL OF THE GOVERNMENT AND THE STATE

A. Measures adopted after the presentation of the initial report

29. In January 2001, the Interdepartmental Commission for the Monitoring of the Implementation of Human Rights operating within the Ministry of Foreign Affairs studied the complete report on the presentation of the initial report of the Republic of Slovenia and the tasks listed in the recommendations of CERD.

30. Having studied the report, on 29 March 2001 the Government reached a decision concerning the tasks and obligations of individual government and State institutions to implement the recommendations of CERD (in six points). Among other conclusions, the Government decided that:

(a) The initial report and the concluding observations of CERD must be made public in an appropriate way. The introduction of this publication must include information on all legal remedies available in Slovenia to the victims of racial discrimination or xenophobia;

(b) The Ministry of Foreign Affairs should study the possibility of making a declaration in accordance with article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and ratify the amendment to paragraph 6 of article 8;

(c) The Ministry of the Interior, the Ministry of Justice and the Ministry of Defence must expand training programmes for the staff of these ministries, particularly those who perform tasks involving the lawful use of force, with education on human rights focusing particular attention on the provisions of the Convention;

(d) The Government Office for Immigration and Refugees must formulate a proposal for the granting of a suitable status to refugees enjoying temporary asylum in the Republic of Slovenia which would grant the refugees fundamental rights and freedoms and facilitate their integration into society.

B. Education and training of State administration officials with particular attention to tasks involving the lawful use of force

1. Ministry of the Interior

31. Institutions in charge of the education and training of the police (secondary police school, police college, the unit for additional training at the police academy, police and security faculty) pay considerable attention to topics connected with the observation of fundamental human rights and freedoms. The programme includes chapters on the ethical aspects of law and legal regulations, particularly those included in international documents on the protection of human rights. The legal knowledge of students is then expanded with professional classes. At the Administrative Academy, founded within the Ministry in 2000, the training programme includes the seminar class entitled "Administration and instruments of persons vested with public authority in the protection of cultural rights of ethnic communities." Human rights are brought to the attention of police officers also while they are studying the provisions of the Criminal Procedure Act which deal with arrest and detention orders. The professional class "Police ethics", which focuses on all legal acts on human rights, includes the International Convention on the Elimination of All Forms of Racial Discrimination.

32. In order better to acquaint police officers with the protection of human rights, a manual on international human rights standards was printed in 2000 and given to every Slovenian police officer. In association with the Information Documentation Centre of the Council of Europe in Ljubljana, the Ministry of the Interior has published a booklet about the visit of the European Committee for the Prevention of Torture. The booklet includes a supplement entitled "Human Rights Ombudsman Visits Police Station".

33. In 2000, the Police Headquarters issued special cards in several languages (Slovenian, French, English, German, Hungarian and Italian) giving notice of arrest with the intention of detention as specified in the regulations on police powers, and including basic information on the legal reasons for arrest and the rights of the arrested individual. In the same year, two special posters were issued which in 12 different languages inform individuals in detention of the legal reasons for arrest and the rights of the arrested individual. Posters were distributed to all police units; they are visibly displayed in their offices and are accessible to individuals in detention.

2. Ministry of Defence

34. In keeping with the recommendations of CERD, the Ministry of Defence included the International Convention on the Elimination of All Forms of Racial Discrimination in training programmes of the Slovenian Army in 2001. Moreover, the Slovenian translation of the Convention together with instructions was distributed to all army headquarters and units of the Slovenian Army.

35. During the process of reforming the content of training programmes, the study of the Convention will be included in the class on general military regulations.

3. Ministry of Justice

36. According to the Administration of the Republic of Slovenia for Execution of Penal Sanctions, all penal institutions received translated texts of international conventions dealing with the treatment of individuals in detention. All new personnel of penal institutions are acquainted with these conventions, for immediately after employment, they must sit a professional examination, the syllabus of which includes these conventions.

37. Seminars and thematic lectures on individual aspects of the protection of human rights are organized as part of regular meetings and educational events for legal experts, which take place every year.

38. Protection of human rights is incorporated into the regular education of judges (at two levels: beginners, and all judges alike) and other judicial employees.[16]

C. Access to information on the possibility of protection in cases of the violation of human rights

39. The population of Slovenia is relatively well acquainted with the rights and possibilities of legal protection granted by international documents on the protection of human rights in general, and consequently with the International Convention on the Elimination of All Forms of Racial Discrimination. State authorities also notify relevant non-governmental organizations of the adoption of measures for the protection of rights of a certain part of the population.

40. Prior to the publication of the Decree on the Acquisition of Temporary Asylum for the Citizens of Bosnia and Herzegovina in the Official Gazette of the Republic of Slovenia, the Ministry of the Interior/Office for Immigration and Refugees notified the citizens of Bosnia and Herzegovina registered with the Red Cross, the Office of the United Nations High Commissioner for Refugees (UNHCR), regional units of the Red Cross of Slovenia, other non-governmental organizations working with refugees and the media in Slovenia and Bosnia and Herzegovina on the procedure for the acquisition of temporary asylum.[17]

41. The general public receives information about the level of protection of human rights in Slovenia from the Human Rights Ombudsman and civil society institutions which provide cost-free legal aid to all victims and injured parties in cases of the violation of fundamental

human rights.[18] Cost-free legal aid is also provided by labour unions to their members. At the moment, the National Assembly is reading the draft legal aid act, which will define the manner and conditions for the acquisition of cost-free legal aid.[19]

42. As a mediator between individuals and the State structure, the Human Rights Ombudsman in his report of 1998 called for greater accessibility of public information and presented several concrete proposals for improvements in the area of access to legislation and judicial practice concerning human rights protection. The Human Rights Ombudsman's criticism of the practice in which rulings of courts in the capacity of State authorities were accessible only through a commercial legal information service was successful: after the publication of the Human Rights Ombudsman's report, both the Constitutional and Supreme Court of the Republic of Slovenia enabled free access to their judicial practice through their official Web sites.

D. Temporary refugees

43. As early as 1994, the Republic of Slovenia initiated a legislative procedure for the adoption of a law which would define the right to temporary asylum in greater detail. In keeping with the Temporary Asylum Act (Official Gazette of the Republic of Slovenia, No. 20/97), which came into force in April 1997, approximately 2,650 citizens of Bosnia and Herzegovina at present enjoy the right to temporary asylum. Temporary asylum is provided until the Government of the Republic of Slovenia establishes that conditions of war, which prompted the introduction of the temporary asylum regime for citizens of Bosnia and Herzegovina, have definitely ceased to exist. According to the law, individuals enjoying temporary asylum have the right to live in the Republic of Slovenia for the duration of the temporary asylum, and the right to accommodation in refugee centres, basic health care, education and temporary or occasional employment. As far as the fundamental rights of individuals enjoying temporary asylum are concerned, only the right to work is questionable, since according to the Temporary Asylum Act, these individuals have the right to only occasional or temporary employment.[20]

44. Most individuals enjoying temporary asylum in the Republic of Slovenia come from areas where their nation forms a minority of the population. In the opinion of UNHCR, temporary asylum for individuals who would find themselves in an ethnic minority on their return home can be cancelled only after profound political, security, legal and social changes in Bosnia and Herzegovina, which would facilitate the safe and dignified return of these individuals. Their return must be voluntary.

45. The fact that temporary asylum status has been in force for the last nine years demands the introduction of a different and more permanent status for individuals enjoying temporary asylum.

46. The Government Office for Immigration and Refugees has already prepared a report addressed to the Government of the Republic of Slovenia on possibilities for the integration of individuals from Bosnia and Herzegovina who enjoy temporary asylum, proposing a status which would ensure and facilitate their integration into Slovenian society. According to the Office, the issuing of permanent residence permits would be the most suitable and lasting solution.[21] The Office considers that if a solution could be found within existing legislation, the

relevant status could be granted to individuals enjoying temporary asylum by the end of 2001. But if changes have to be made to the present legislation, this deadline would be extended since the necessary statutory foundations would only be ready by the end of 2001.

IV. PRACTICAL IMPLEMENTATION OF THE PRINCIPLES AND OBJECTIVES OF THE CONVENTION

47. The decade following the declaration of Slovenian independence was a very dynamic period, during which the settling of relations between different nations was influenced in the public arena by broad international currents and the war raging in the neighbouring countries, from where large numbers of the present non-Slovenian inhabitants of Slovenia arrived. The perception of one's identity in the new independent State was sometimes expressed through feelings of imminent threat and mistrust of the "other". The Human Development Report (Slovenia 2000-2001), which is based on comparative analyses of different periods from 1992 to 1999, states that during the first research period (1992) Slovenians were mostly intolerant towards the "other" who might "represent a threat" to Slovenian citizens (foreign workers, Muslims, etc.).[22] On the other hand, these feelings triggered a similar psychological response of mistrust on the "other" side. Since 1992 intolerance towards the "other" has been subsiding, with the exception of the intolerance towards the Roma which has consistently grown up to 1998, falling under the 1992 level only in 1999.[23]

48. In the introduction to the chapter on the fundamental constitutional rights of the report on the implementation of human rights in Slovenia in 2000, the Human Rights Ombudsman states that the number of relevant cases has dropped. After close analysis of cases handled, both the small number of reported cases and their content reveal that there are no severe or systematic violations of fundamental constitutional rights in Slovenia.

49. Reports of the Slovenian media on these issues are relatively objective and are gradually improving in terms of a greater understanding of cultural and other differences which exist in Slovenia and which are growing as a result of increased immigration.[24] Issues concerning members of the former Yugoslav nations are nowadays reported by the media without special emotional input.

50. Selected cases show that victims of violation of fundamental constitutional rights have resorted to all available legal remedies - from indemnity claims in civil lawsuits to constitutional appeals at the Constitutional Court of the Republic of Slovenia. According to the report of the Public Prosecutor's Office of the Republic of Slovenia,[25] these violations are isolated and their number is relatively low throughout Slovenian territory.[26]

51. The individual cases from the judicial practice of the Constitutional Court, particularly those rulings which are aimed at improvement of the systemic solutions in the legal system of the Republic of Slovenia and initiatives of the Human Rights Ombudsman, prove that the legal framework has been built for implementation of the goals and principles of the International Convention on the Elimination of All Forms of Racial Discrimination.

Notes

[1] Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 18 (A/55/18) paras. 237-251.

[2] Recently, many cases of non-conformity of individual provisions of general laws for particular areas with the Convention on the Rights of the Child have been reported. An example from practice: in deciding on childcare, in an appeal case at its session on 16 July 1998 the Supreme Court decided that the ruling of the first- and second-instance courts did not conform to the provisions of the Constitution of the Republic of Slovenia and ratified international treaties, which, according to the provisions of article 153 of the Constitution of the Republic of Slovenia, are higher in the hierarchy of legal acts than laws. In connection with the ruling in this case, the issue of the constitutionality of general laws for particular areas was brought under scrutiny and the Supreme Court lodged a review of constitutionality and legality with the Constitutional Court. Ruling II Ips 563/97, Civilno procesno pravo, VS RS - 1998/74, pp. 402-412.

[3] Societies Act (Official Gazette of the Republic of Slovenia 60/95 and 49/98); Act Amending the Societies Act (Official Gazette of the Republic of Slovenia 89/1999), article 15. According to the act, a society ceases to exist if it stops operating or if its aim is the disruption of the constitutional order, if the activities are criminal offences or if they incite national, racial, religious or other kind of inequality, national, racial religious or other kind of hatred or intolerance, or if they incite violence or war. The termination of a society from the previous paragraph shall be established by a decree from the competent authority; Punishment Enforcement Act (Official Gazette of the Republic of Slovenia 22/2000), article 10. Torture is any act carried out by an employee of a public service or any other individual who following the orders or with the consent of an officer causes severe physical or mental pain or suffering to a person undergoing criminal punishment in order to obtain information or confession from this same person or a third party, in order to punish the person for an act which he/she has committed or is suspected of having committed, in order to intimidate or punish a third party or for some other reason based on any kind of discrimination.

[4] In cases of the violation of constitutional rights, provisions of the Constitution of the Republic of Slovenia envisage the possibility of appeal to the Constitutional Court of the Republic of Slovenia. See the selected cases from judicial practice (point 52).

[5] Article 141 of chapter 16 of the Criminal Code, "Criminal Offences Committed in Violation of Human Rights and Freedoms", defines the criminal offence of "violation of equality":

> "141/1 Anybody who out of differences in nationality, race, colour, religion, ethnic identity, sex, political or other beliefs, sexual orientation, economic status, family background, education, social status or any other reason denies somebody a human right or fundamental freedom acknowledged by the international community or defined by the Constitution or law, or if he/she limits any of these rights, or if he/she grants a special right or privilege to the other based on these differences, shall be punished by a fine or imprisonment of up to one year.

"141/2 The same punishment shall be imposed on those who prosecute an individual or organization because of their efforts to provide equality for all.

"141/3 If the criminal offence described in the first and second paragraph of this article is committed by an official taking advantage of his or her position or official rights, he/she shall be punished by imprisonment of up to three years."

Article 300, "Promotion of National, Racial or Religious Hatred, Discord or Intolerance":

"300/1 Criminal Code: Anybody promoting or encouraging national, racial or religious hatred, discord or intolerance or promoting ideas of racial supremacy shall be punished with imprisonment of up to two years.

"300/2: If the offence from the previous paragraph involves use of force, abuse, threat, defamation of national, ethnic or religious symbols, damage to foreign property or desecration of monuments or graves, the offender shall be punished by imprisonment of up to five years."

[6] Ruling No. Up.-275/97 of 16 July 1998.

[7] Example from practice:

In a ruling on 28 September 2000 reached in a procedure initiated by the court itself (case U-I-200/00), the Constitutional Court annulled article 30 of the Temporary Asylum Act (Official Gazette of the Republic of Slovenia, No. 20/97) and abolished the Decree on Temporary Asylum for the Citizens of Bosnia and Herzegovina (Official Gazette of the Republic of Slovenia, No. 41/97 and 31/98). The disposition of the ruling states:

"Anybody suffering from damage caused by an individual legal act adopted on the basis of the annulled Decree may demand remedy thereof from the competent authority in the period of three months from the publication of this disposition in the Official Gazette of the Republic of Slovenia."

For the explanation of the case, see text (point 59).

[8] By means of appeal to the Constitutional Court, the plaintiff contested the decision of the Ministry of the Interior rejecting his application for asylum in the Republic of Slovenia and ordering him to leave the country within three days of the decision becoming final. The Administrative Court ruled against the plaintiff's appeal of the decision of the Ministry of the Interior, encouraging him to appeal at the Constitutional Court of the Republic of Slovenia. In its ruling of 29 June 2000, the Constitutional Court annulled the second subparagraph of paragraph 2 of article 40 of the Asylum Act (Official Gazette of the Republic of Slovenia, No. 61/99) since it contradicted the right to legal remedy (article 25 of the Constitution) and

excluded any possibility of appeal against rulings of the first-instance court in cases of administrative disputes. This does not conform to the principle of proportionality (paragraph 3 of article 15 of the Constitution) and is therefore inadmissible.

The ruling was published in the Official Gazette of the Republic of Slovenia, No. 66/2000.

[9] In point four of the grounds for ruling, the Constitutional Court states that the second subparagraph of paragraph 2 of article 40 of the Temporary Asylum Act contradicts the right to legal remedy. Article 25 of the Constitution invests anybody with the right to appeal or any other legal remedy against rulings of courts or other State authorities, local community authorities and persons vested with public authority, which concern his/her rights, obligations and legal interests.

[10] In 2000, a total of Slt 116,225,870 was allocated in the national budget for the cultural activities of ethnic communities, the Romani community and other ethnic groups and immigrants.

[11] Information of the Inspectorate of the Republic of Slovenia for Education and Sports of 12 April 2001 and the Labour Inspectorate of the Republic of Slovenia of 10 April 2001. In the course of their work, inspectors have not come across any violations of this kind.

[12] Ruling No. U-I-416/98-38 of 22 March 2001. For the explanation of the content see point 51 in the text.

[13] Eight Romani societies operate in Slovenia, whose membership consists of both the indigenous and immigrant Romani people. In accordance with the Societies Act, the Romani societies are organized in the Romani Association of Slovenia. The Romani societies and the Romani Association cooperate with municipal and State authorities in the efforts for the improvement of the Romani's situation.

[14] The Ministry of Education finances optional and supplementary classes for Romani children. So far, 14 special textbooks for Romani students have been published. In the 1999/2000 academic year, only one primary school had a special after-school activities department for Romani children. The rest of the total of 405 Romani children attending after-school activities attended mixed after-school activity departments. In the same year, a total of 1,130 Romani pupils were entitled to a free snack at school and 545 to free lunch. Until 31 December 1998 the Ministry of Education paid the monthly sum of Slt 1,000 and starting on 1 January Slt 1,100 to schools for every Romani pupil. Textbooks for Romani children are provided by schools from textbook funds.

[15] In addition to the representative of the Romani community in the capacity of municipal councillor in the municipality of Murska Sobota, who has recently begun a second term of office, two other municipalities (Rogaševci and Tišina) have added a provision to the municipal statutes that a representative of the Romani community must be elected in the capacity of municipal councillor. The post will be filled at the next local community elections in 2002.

[16] For example, civil law school for judges of civil law:

> Predavanje o varstvu človekovih pravic (Lecture on the Protection of Human Rights), Pravosodni bilten 2/1999, pp. 59-72.

[17] Grounds (B.-I point 2) for the ruling of the Constitutional Court of 28 September 2000 (case U-I-200/00).

[18] Legal Information Centre of Non-Governmental Organizations, Metelkova 6.

[19] The draft of the new Legal Aid Act envisages regular basic courts and district courts providing legal aid to both Slovenian and foreign citizens and exemption from payment for socially endangered categories of the population. The Act should be adopted in a fast-track procedure. The poor financial and social status of the individual should not represent an obstacle in the exercising of the constitutional right to judicial protection. According to the Act, those entitled to cost-free legal aid are citizens of the Republic of Slovenia and foreigners with temporary or permanent residence in the country, individuals without citizenship living in Slovenia legally, non-governmental organizations and non-profit organizations.

[20] From 1992 to 1999, approximately 10,000 temporary refugees attended Slovenian schools (primary and secondary schools and universities). The policy of the Republic of Slovenia has been favourably inclined towards students since the arrival of the first refugees. Until 1999 citizens of Bosnia and Herzegovina could freely enrol in colleges and university despite the fact that as foreign citizens they would have had to pay tuition fees. A detailed report on the status and rights of refugee children is included in the report on article 22 in the second periodic report of the Republic of Slovenia on measures adopted for the purpose of implementation of the Convention on the Rights of the Child submitted in September 2001.

[21] An obstacle for the acquisition of permanent residence permits by these individuals is the provisions of article 8 of the Temporary Asylum Act (Official Gazette of the Republic of Slovenia, No. 20/97), according to which the duration of temporary asylum cannot be considered as the period of residence necessary for acquisition of the permanent residence permit, employment, health insurance and acquisition of a suitable home by these individuals.

[22] Human Development Report (Slovenia 2000-2001), p. 66.

[23] Human Development Report (Slovenia 2000-2001); information is taken from the Slovenian Public Opinion Survey.

[24] Reports of Slovenian media on issues connected with racial discrimination are highly varied. This was recently made apparent particularly in connection with the rapidly growing number of immigrants from Eastern European countries and the Middle East who choose to travel through Slovenian territory. Reports of the Slovenian media were at first unethical, since they often included statements from people who were intolerant towards foreigners or were even xenophobic. After a strong reaction from the civil society, this kind of reporting subsided and became more tolerant and analytical.

[25] Material on violations of article 300 of the Criminal Code reported to the Public Prosecutor's Office in Slovenia from 1999 to 2001 was prepared by the senior associate of the Public Prosecutor's Office of the Republic of Slovenia, Aleks Lenard.

[26] Cases:

1. In 2000 a criminal complaint against the insulting of the religious sentiments of two Romani plaintiffs was lodged with the Public Prosecutor's Office under article 300 of the Criminal Code. According to the report, the incident flared up because of excessive use of water. The Public Prosecutor's Office established that there was no evidence of the offence under article 300 of the Criminal Code and dropped all charges.

2. In July 1999 a suspect of Hungarian nationality designed posters with the help of a computer and photocopying machine, displaying a sign in Hungarian which translated read: "1999 August 11, Wednesday at noon, beginning of a long-awaited awakening of Hungarians." He stuck his posters over invitation notices for the celebration of the eightieth anniversary of the incorporation of the Prekmurje region into Slovenia. The investigation is still not finished and the case is under the consideration of the District Court in Lendava.

Appendix

SELECTED CASES[a]

A. References to the International Convention on the Elimination of All Forms of Racial Discrimination

Supreme Court: ruling of the Supreme Court of the Republic of Slovenia, case No. VS 20320

With a ruling in 1995 the Supreme Court granted the request of the Public Prosecutor for the protection of legality and changed the final sentence of probation for a criminal offence of national intolerance to acquittal.

> "In the grounds for the acquittal, the Supreme Court states that the calls made by the convicted person for the 'forceful expulsion of the members of other nations and ethnic communities' from the country violate not only the current legislation but also general regulations acknowledged by civilized nations, including the principle of non-discrimination from article 2 of [the International Covenant on Civil and Political Rights] and the International Convention on the Elimination of All Forms of Racial Discrimination (Official Gazette of the Socialist Federal Republic of Yugoslavia, International Treaties No. 6/1967)."

According to the Court, however, the committed verbal offence was not a criminal offence due to the considerably diminished responsibility of the offender, who is mentally impaired and therefore promoted national intolerance in a state of insanity.

B. Legal remedies/possibility of reimbursement of non-material damage caused by the violation of human rights on the basis of national or ethnic background

Supreme Court: indemnity for mental suffering caused by defamation of good name and honour

The first-instance court ruled that the defendant must pay damages to the plaintiff for the publication of an article which caused defamation of the plaintiff, his good name and honour. The entire article is insulting, particularly the part insinuating the plaintiff's "madžaronstvo".[b]

The first-instance court ruled that the plaintiff must receive damages (in an amount lower than originally demanded) for mental suffering caused by the defamation of good name and honour.

The second-instance court dismissed the appeals made by the plaintiff and the defendant and confirmed the ruling of the first-instance court.

The defendant requested a review which he justified in part by the fact that one of the plaintiff's ancestors had indeed changed the family name and that the article was meant to be a satire and therefore could not possibly cause defamation of the plaintiff or violation of the plaintiff's personal rights.

In a review ruling of 18 August 1997 the Supreme Court stated that the review was in part justified and lowered the damages. The Supreme Court stated that the plaintiff had every right to invoke freedom of speech and the right to free flow of information as one of the foundations of a democratic society. But the right to freedom of speech and free flow of information is not absolute but restricted by the rights of others and the protection of the reputation and rights of other people.

In this case, the two courts regarded the entire article as defamatory, particularly the part that accuses the plaintiff of trying to make a Slovenian town part of Yugoslavia and labelling him as a "madžaron". This defamatory accusation was not based on fact and did not represent a normal form of criticism of a public figure.[c]

Supreme Court: indemnity for non-material damage due to mental suffering caused by defamation of good name and honour

In a review procedure, the Supreme Court on 10 February 1999 rejected a petition for review of the ruling of the first- and second-instance courts concerning the damages awarded for the publication of a newspaper article attacking the personal integrity of the plaintiff. The article, entitled "Health care needs purging", does not criticize the plaintiff's professionalism but expresses the author's personal contempt for the plaintiff, insinuating the plaintiff's Romani ancestry.[d]

According to the review court, the first- and second-instance courts had already correctly established that insinuations of the plaintiff's Romani family background were insulting. The defendant had thereby violated the plaintiff's human rights to the degree where the plaintiff was entitled to indemnity.

C. Non-discriminatory treatment of the members of different national and ethnic communities

Constitutional Court of the Republic of Slovenia: political participation of the Romani community at the local level

In a review of constitutionality and legality procedure in March 2001, which was initiated by Rajko Šajnovič of Novo Mesto, the Constitutional Court of the Republic of Slovenia established that the Statute of the Municipality of Novo Mesto (Official Gazette of the Republic of Slovenia, No. 47/99) does not conform to the Local Self-Government Act since it lacks a provision which would stipulate that the Romani community, which is indigenous to the area of the Novo Mesto municipality, has the right to representation in the City Council.[e] The Municipality of Novo Mesto must remedy this non-conformity with the law within six months after the publication of the court's ruling in the Official Gazette of the Republic of Slovenia.[f]

In his initiative for the procedure, Rajko Šajnovič stated that in the local elections in 1998 he had not been allowed to run for representative of the Romani community to the Novo Mesto Municipal Council and that in his opinion the Statute of the Municipality of Novo Mesto, which lacks the provision which would give the Roma the right to elect their representative to the Municipal Council, did not conform to the Constitution and article 39 of the Local Self-Government Act.

The Constitutional Court concluded that the Self-Government Act did not conform to the Constitution and that the National Assembly had to remedy this unconstitutionality within one year of the publication of the Court's ruling in the Official Gazette of the Republic of Slovenia.

In the grounds for ruling (point 12) the Constitutional Court states that the provisions of the fifth paragraph of article 39 of the Local Self-Government Act are incomplete (that there is a legal loophole). The legislator is required to give a more precise definition of the criteria on the basis of which municipalities would be able to establish whether an indigenous Romani community lives in their territory. The legislator must also decide whether additional criteria should be established for the exercising of the right of the Romani community to have a representative in the municipal council (level of organization, size of the Romani population). One of the reasons why municipalities with Romani communities did not make it possible for the Roma to exercise their legal right in the local elections in 1998 is the fact that no deadline by which municipalities must fulfil their legal obligation had been set.

Constitutional Court of the Republic of Slovenia: discrimination against non-Slovenian citizens of the Republic of Slovenia

In its ruling of 23 September 1998 concerning a procedure initiated by V.K. of Koper, the Constitutional Court of the Republic of Slovenia ruled that the words "Slovenian nationality" must be removed from the third paragraph of article 2 of the Redress of Injustices Act (Official Gazette of the Republic of Slovenia, No. 59/96).[8] The procedure was initiated by a citizen of the Republic of Slovenia of Serbian ancestry, according to whom the third paragraph of article 2 of the Redress of Injustices Act gives certain citizens rights which are denied to the non-Slovenian citizens of the Republic of Slovenia.

According to point 10 of the grounds for ruling of the Constitutional Court, the Republic of Slovenia belongs to all its citizens (article 3 of the Constitution). Therefore, in the granting of this right, the Act should not discriminate between individuals with different personal background (the first paragraph of article 14 of the Constitution of the Republic of Slovenia).

Part of the provision of the third paragraph of article 2 of the Redress of Injustices Act, which grants certain rights only to individuals of "Slovenian nationality", thereby excluding other possible beneficiaries, therefore does not conform to the Constitution (point 12 of the grounds for ruling).

Supreme Court of the Republic of Slovenia: rejection of the application of a Romani man from Macedonia for citizenship of the Republic of Slovenia

The plaintiff applied for citizenship of the Republic of Slovenia at the Secretariat of the Interior of the City of Ljubljana. On 23 December 1990 the plaintiff was registered as a permanent resident of Ljubljana (see paragraph 40 of the initial report of the Republic of Slovenia, explanation regarding the citizenship of the Republic of Slovenia Act), he indeed lives at the registered address and his application was filed on time. In the course of the administrative procedure, the court established that the plaintiff had been sentenced by the municipal court to imprisonment several times between 1977 and 1990 and that he was also in prison at the time of the procedure. Since numerous punishments had yielded no effect of correction, the defendant maintained that if the plaintiff was granted citizenship of the Republic of Slovenia, he would represent a serious threat to public order and peace. Since in the defendant's opinion, the reasons stipulated in the third paragraph of article 40 of the Citizenship of the Republic of Slovenia Act applied, the defendant could not grant the plaintiff's application.

The plaintiff states that he has not lived in Macedonia for 14 years and that he has committed criminal offences (minor thefts) only to support himself. He has applied for Slovenian citizenship, that is a Slovenian passport, since he cannot return to Macedonia after he has served his sentence because he has no family there. He also states that he needs a passport to travel to India, where, as a Romani man, he might be given better opportunities for a normal life than in Slovenia.

In its ruling of 8 July 1993, the Administrative Court states that the contested decision to reject the application of Slovenian citizenship is legal. The complaint was rejected since the plaintiff's status (threat to the public order of the State) was correctly ascertained according to the third paragraph of article 3 of the Citizenship of the Republic of Slovenia Act.

Human Rights Ombudsman: certificate of joint household for foreign citizen

The plaintiff, a citizen of the Republic of Macedonia with a permit for permanent residence in Slovenia, turned to the Human Rights Ombudsman since her son, a citizen of the Republic of Slovenia and living at the same permanent address as the plaintiff, had failed to obtain a certificate of joint household which he is required to enclose with his application for residence in a student dormitory. The certificate is important for the definition of income per each member of the household. The certificate issued to her son by the municipal authorities stated only his father and brother, who are both citizens of the Republic of Slovenia, and not the plaintiff.

The local administrative unit in its reply referred to the instructions and explanation of the Ministry of the Interior concerning the procedure for registration and cancellation of permanent and temporary residence of foreign citizens, which was issued on 6 March 2000, and according to which a Slovenian citizen living at the same address and in the same household as a foreign citizen (to whom he is related) is not entitled to a certificate of joint household which would include the foreign citizen.

The Human Rights Ombudsman pointed out the lack of conformity of relevant legislation and in connection with this case proposed that the Minister take into account the fact that due to inconsistent legislation, Slovenian citizens in such cases are in a disadvantaged position in comparison to other citizens of the Republic of Slovenia only because they live in the same household with a foreign citizen.

The Registration of Residence Act, which was adopted on 26 January 2001 (Official Gazette of the Republic of Slovenia, No. 9/01) no longer contains these inconsistencies. The Act creates legal foundations for a consistent registry of households both for the citizens of the Republic of Slovenia and foreigners.

Administrative Court: refusal of planning permit

The plaintiff's application for a planning permit to construct a house was denied. The plaintiff contested the decision of the competent municipal authority. The appeal was rejected.

The plaintiff claims that he was misled by the minutes of the inspection of the relevant land lot of 1992 which states that the construction is permissible. He also claims that the planning permit was refused because he is Romani. According to the documentation of the first-instance court, the lot is located in an area governed by the decree on special land use conditions. The tables included in the decree show that construction of homes is not allowed in this area, which is intended for recreation.

According to the Administrative Court, the documentation of the first-instance court does not indicate that the planning permit was refused to the plaintiff because he is Romani. The planning permit was not granted because the public land use plan does not allow the construction of homes in this area. The fact that the house of the plaintiff's mother is located in the immediate vicinity of the proposed location is irrelevant to the case.

According to the plaintiff, he applied for the planning permit on 23 August 1993 when construction in the area was still permissible. The first-instance authority did not respond by the prescribed deadline and the plaintiff received the decision after the adoption of the land use act, when planning permits could no longer be issued. According to the plaintiff, the municipality changed regulations during the procedure to his disadvantage.

The Administrative Court rejected the suit. It is the Court's opinion that what is relevant for the case is whether conditions for the granting of the planning permit were met at the time. It is evident from the long-term municipal plans for the period 1986-2000 (Official Gazette of the Socialist Republic of Slovenia, No. 8/88 and Official Gazette of the Republic of Slovenia, No. 2/92) that home construction was not allowed in the area in question even prior to the adoption of the above land use conditions.

Human Rights Ombudsman: resettlement of Roma by a decree of the municipal inspector

The plaintiff first turned to the Human Rights Ombudsman in 1999 when she did not agree with the planned resettlement of Roma (including her family) from illegal settlements to a new location with prefabricated housing which had been selected by the municipal authorities.

She resisted the resettlement plans mostly due to her dispute with another Romani family. At the time the Human Rights Ombudsman gave his support to the municipal project for the improvement of the Romani living conditions.

Through a legal representative, in October 2000 the plaintiff presented the Human Rights Ombudsman with the resettlement decree issued by the municipal inspector. The decree set a deadline for the resettlement and envisaged the final measure of forced resettlement. The plaintiff appealed against this decree.

The Human Rights Ombudsman informed the municipal authorities that the Public Order and Peace Ordinance of the Grosuplje Municipality (Official Gazette of the Republic of Slovenia, Nos. 16/96, 23/96 and 65/97) and its provisions on the prohibition of camping and on the external appearance of buildings does not create a sufficient legal basis for this kind of decision.

According to the mayor, the sanitary and health conditions had been intolerable for several years and the old dwellings run down, which resulted in frequent conflicts with the neighbouring population.

Nevertheless, resettlement was carried out, although most of the Romani families had already moved by then, albeit not to the location selected by the municipal authorities.

D. Punishment and prosecution of racial violence offences

Human Rights Ombudsman: proposal for the adoption of stricter measures against obviously racially motivated violent offences

The draft report on the work of the Human Rights Ombudsman in 2000 cites a case in which police took more effective action following the Human Rights Ombudsman's proposal that more attention should be paid to violent offences which are obviously racially motivated.

The International Friendship Club reported to the Human Rights Ombudsman an incident in February 2000 when 10 skinheads physically attacked two black inhabitants of Slovenia. The club acquainted the Human Rights Ombudsman with several cases of violence mostly aimed at the black members of the club. The Human Rights Ombudsman immediately responded to the report and asked the Ministry of the Interior for additional information on the circumstances surrounding the attack in question and other similar cases which had recently been investigated in Ljubljana. To the initial reply of the police that the perpetrators had still not been identified, the Human Rights Ombudsman responded by pointing out that violence committed against other races or ethnic groups cannot be classified as ordinary criminal offences against body and property, since they encourage national, racial or religious hatred. He expressed his expectation that the police would continue with the investigation and identify the perpetrators. Following this, the police identified the attackers in this specific case.

Ministry of the Interior: violation of human dignity case

In 2000 the Office of the Criminal Police of the Ljubljana Police Station lodged a criminal complaint under article 270 of the Criminal Code of the Republic of Slovenia on the suspicion of the criminal offence of violation of human dignity having been committed through the abuse of official authority or official rights. A disciplinary procedure was instigated against three police officers who in September 2000 abused five citizens of the People's Republic of China, thereby violating their human dignity.

E. Status and rights of temporary refugees in the Republic of Slovenia

Constitutional Court

In a ruling of 28 September 2000 and on its own initiative, the Constitutional Court abolished article 30 of the Temporary Asylum Act (Official Gazette of the Republic of Slovenia, No. 20/97) and the Decree on the Acquisition of Temporary Asylum by the Citizens of Bosnia and Herzegovina (Official Gazette of the Republic of Slovenia, Nos. 41/97 and 31/98). According to the Constitutional Court, the statutory authorization envisaged in article 30 of the Temporary Asylum Act, according to which the Government decides which citizens of Bosnia and Herzegovina have the right to temporary asylum, authorizes the Government to carry out the entire procedure of granting the right to temporary asylum to those citizens of Bosnia and Herzegovina who have already enjoyed temporary asylum in the Republic of Slovenia. For this reason, the Constitutional Court nullified the statutory authorization and abolished the executive act (the Decree).

In the grounds for ruling (A, point 1) the Constitutional Court states that during the proceedings of constitutional complaints (by three plaintiffs) it was concluded that prior to the final ruling on constitutional appeals, the constitutionality of article 30 of the Temporary Asylum Act and the Decree on the Acquisition of Temporary Asylum by the Citizens of Bosnia and Herzegovina must be reviewed. The rulings of the Supreme Court, contested by constitutional complaints, confirmed the opinion of administrative authorities (administrative units and Ministry of the Interior) and the Administrative Court that the deadline for the submission of an application set by article 6 of the Decree is a preclusive deadline set by the substantive regulation for the exercising of a certain right and, therefore, due to the missed deadline, the re-establishment of the previous status is not permissible according to the provisions of the General Administrative Procedure Act which was valid at the time of the procedure. As a result, the applications of the plaintiffs for temporary asylum were rejected and a deadline for their departure from the Republic of Slovenia set. Since their return to the home country was not possible, they were accommodated in the Transit Centre for Foreigners.[h]

In the grounds for ruling (B-II, points 5 and 6) the Constitutional Court states that according to article 87 of the Constitution the rights and obligations of citizens and other individuals are defined by the National Assembly exclusively through adoption of a law. Administrative authorities cannot take independent decisions concerning these rights and obligations.

Notes

[a] The selection of cases illustrating the basic points of the periodic report has been prepared by Vera Klopčič MA of the Institute for Ethnic Studies of Ljubljana, in cooperation with and with expert assistance from the Judge of the Supreme Court of the Republic of Slovenia, Lidija Kolman Perenič, the Head of the Legal Information Centre of the Constitutional Court of the Republic of Slovenia, Dr. Arne Mavčič, and the Deputy Human Rights Ombudsman, Jernej Rovšek.

[b] A pejorative colloquial expression for Hungarian patriotism.

[c] Since both courts ruled that the plaintiff's personal rights had been violated, they appropriately resorted to substantive indemnity provisions. But since the awarded damages exceeded the legal standard of just indemnity and damages usually awarded by courts in similar cases, the Supreme Court lowered the sum of the awarded damages.

[d] In his petition for a review of the court proceedings, the defendant denied that he ever called the plaintiff a "Gypsy", since his own father was also Romani.

[e] Ruling No. U-I-416/98-38 of 22 March 2001.

[f] Rajko Šajnovič is a Romani man from Novo Mesto, an activist for many years fighting for the rights of the Roma and a member of the ROM Inter-Municipal Society. In response to his initiative, the mayor of Novo Mesto pointed out the ambiguity of the term "indigenous", such as how many members must a Romani community have to be regarded as indigenous, what percentage should it represent in the total population of a municipality, and whether a representative of a Romani community who in the public census defines himself as a Slovenian has the right to vote in the elections for a representative of the Romani community.

[g] The third paragraph of article 2 of the Redress of Injustices Act envisaged special status, reimbursement of damages and a right to pension insurance for the former political prisoners and relatives of individuals put on trial and executed after the Second World War in the territory of the Republic of Slovenia and for "individuals of Slovenian nationality who faced trial in courts of other republics or the federation of the former Yugoslavia if in the time of the enforcement of the Redress of Injustices Act they are permanent residents and citizens of the Republic of Slovenia".

[h] In the constitutional appeal proceedings, the Ministry of the Interior explained that the Temporary Asylum Act had been adopted a year and a half after the peace treaty in Bosnia and Herzegovina was signed and when the return of citizens of Bosnia and Herzegovina was at its most intensive point. For this reason, article 30 of the Temporary Asylum Act authorized the Government to decide which citizens of Bosnia and Herzegovina were entitled to temporary asylum, according to which procedure and for how long.

Sources

Poročilo o človekovem razvoju/Human Development Report Slovenia 2000-2001.

Lidija Kolman Perenič MA, Razvoj človekovih pravic in njihovega varstva/Development of human rights and their protection, Pravnik, Ljubljana, year 51(1996), No. 11-12, pp. 591-611.

Dr Arne Mavčič, Access of Individuals to the Constitutional Court: International Practice, September 1999.

Poročilo Varuha človekovih pravic za leto 2000 Report of the Human Rights Ombudsman for 2000.